INDEX TO APPENDIX

	Page
Opinion	1a-2a
Denial of Petition for Rehearing	3a
Pertinent Docket Entries (Cir. No. 626)	5a-7a
Pertinent Docket Entries (Cir. Nos. 1707 & 1708)	8a-12a
Complaint Cir. No. 626	13a
Complaint Cir. No. 1707	22a
Complaint Cir. No. 1708	26a
Motion for Summary Judgment	30a
Partial Summary Judgment	31a
Notice of Appeal	32a

APPENDIX

United States Court of Appeals

FOR THE SECOND CIRCUIT

Nos. 335, 336, 337—September Term, 1963.

(Argued March 5, 1964 Decided March 5, 1964.)

Docket Nos. 28485, 28486, 28487

UNITED STATES OF AMERICA,
Appellee,

v.

DANIEL J. LEARY and SADIE D. LEARY,
Appellants.

Before:

WATERMAN and KAUFMAN, *Circuit Judges,*
DIMOCK, *District Judge.**

Appeal from decision and judgment of the United States District Court for the District of Connecticut, Blumenfeld, *J.*, granting appellee Government's motion for summary judgment in three cases brought against appellants for the collection of back income taxes, penalties, and interest. Affirmed.

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* Sitting by designation.

LOUIS F. OBERDORFER, Asst. Attorney General; Lee A. Jackson, Robert N. Anderson Richard B. Buhrman, Attys., Dept. of Justice, Washington, D. C. (Robert Zampano, U. S. Attorney, of counsel), *for Appellee.*

WILLIAM H. COLLINS, Washington, D. C., *for Appellants.*

PER CURIAM:

The judgment of May 22, 1963 is affirmed in open court upon the unreported opinion below of Judge Blumenfeld in the United States District Court for the District of Connecticut, wherein, atfer consolidation of three cases, the Government's motion for summary judgment was granted on the ground that the complaints in each of the cases, together with such answers as defendants filed, created no factual issues requiring trial.

The taxable years involved in these cases were the years 1933, 1934, and 1935. The uncontested affidavit of debt discloses that the amounts claimed to be due totaled $420,250.05. One of the three cases was commenced 23 years ago; the other two, 18 years ago. We are satisfied that the delay in obtaining of judgment in the consolidated case was not entirely the fault of the Government; but we cannot refrain trom pointing out that, because of intertest accumulations, the judgment now obtained is substantially in excess of double the amount of the taxes claimed to have been due and unpaid; and, in affirming the judgment below, we do not wish to imply that we approve this sort of delay. Nevertheless, as we are satisfied that neither the Government nor the taxpayers have been prejudiced, the judgment is affirmed.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DANIEL J. LEARY and SADIE D. LEARY,
Defendants-Appellants.

On Petition for Rehearing

William H. Collins, Washington, D. C.
for Defendants-Appellants.

Petition denied.

S.R.W.
I.R.K.
U.S.C.JJ.

E.J.D.
U.S.D.J.

April 13, 1964

United States District Court

District of Connecticut

(Tr. pp. A-B)

UNITED STATES OF AMERICA,

v.

DANIEL J. LEARY, SADIE D. LEARY, DANIEL J. LEARY (Son), TRAVELERS LIFE INSURANCE COMPANY, a Corporation, SUN LIFE ASSURANCE COMPANY OF CANADA, AETNA LIFE INSURANCE COMPANY, Corporation, JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, a Corporation.

Pertinent Docket Entries (Civil No. 626)

July 3, 1941—Bill of complain filed under Secs. 3678, 3744 and 3800 of the Internal Revenue Code, claiming judgment in the amount of $370,261.96 with interest.

July 3, 1941—Summons issued and with copies of said bill of complaint handed to the marshal for service.

July 10, 1941—Summons returned showing service.

July 23, 1941—Amended Complain filed.

* * *

July 23, 1941—Summons issued and with copies of Amended Complaint handed to the Marshal for service.

* * *

Pertinent Docket Entries (Civil No. 626)

Oct. 16, 1941—Answer of defendant Sadie D. Leary filed in duplicate and duplicate mailed to U. S. Atty.

* * *

Sept. 12, 1962—Appearance of Albert G. Murphy entered for the defendant Daniel J. Leary.

* * *

Sept. 22, 1962—Memorandum in Lieu of Pre-Trial Order, filed. Blumenfeld, J. Copies mailed Messrs. Murphy, Brodigan and Day, Berry & Howard and U.S. Atty. (3).

Oct. 25, 1962—Motion for Summary Judgment filed by plaintiff.

Oct. 25, 1962—Notice of Mo n, filed by plaintiff.

Oct. 25, 1962—Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment, filed.

Jan. 28, 1963—Hearing on Plaintiff's Motion for Summary Judgment continued for 4 weeks. Blumenfeld, J. William Collins, Wash., D. C., appearance with notation on Motion for Summary Judgment, filed.

Jan. 28, 1963—Appearance of William H. Collins entered for defendant Daniel J. Leary on motion for summary judgment.

Apr. 4, 1963—Hearing on Plaintiff's Motion for Summary Judgment. Decision Reserved. Blumenfeld, J. Government Exhibits 6, 7, 8 and 9 submitted to Judge Blumenfeld, filed. (Certified copies of documents from tax Court and District Director of I.R.S. —all were submitted with Govt. brief.)

Pertinent Docket Entries (Civil No. 626)

May 17, 1963—Ruling on Motion for Summary Judgment entered. Government's Motion granted. Judgment to be entered consolidating Civil Nos. 626, 1707 and 1708 under Civil 626. Blumenfeld, J. Copies mailed Messrs. Day, Berry & Howard; Gross, Hyde & Williams; Murphy; and Brodigan, and on 5/21 copies sent J. O'Connor, Asst. U. S. Atty. and Wm. Collins, and Atty., Dept. of Justice, Washington.

May 22, 1963—Partial Summary Judgment entered that Civil Actions 1707 and 1708 are consolidated with Civil 626; that the plaintiff recover of the defendant Daniel J. Leary the sum of $996,278.69 and of the defendant Sadie D. Leary $750,511.09 of that sum and that the plaintiff recover its cost of action. Blumenfeld, J. Copies mailed Messrs. Day, Berry & Howard, Gross, Hyde & Williams; Murphy; and Brodigan; also, Asst. U. S. Atty. O'Connor and Atty. Collins at Washington.

* * *

July 19, 1963—Notice of Appeal filed. Copies mailed Messrs. Murphy, Brodigan and U. S. Attorney Collins.

* * *

Aug. 26, 1963—Order entered Extending Time Within Which to File Record on Appeal and Docket Appeal to Sept 30, 1963. Anderson, J. Copies mailed Messrs. Collins, Murphy, Zampano and O'Connor.

* * *

Sept. 26, 1963—Stipulation re Contents of Record on Appeal, filed.

Pertinent Docket Entries (Civil Nos. 1707 and 1708)

(Tr. pp. C-E)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[SAME TITLE]

Civil No. 1707

Apr. 12, 1946—Bill of complaint demanding judgment for the full amount of $314,519.87, together with interest as allowed by law, and for costs, filed by authorization of the Commissioner of Internal Revenue of the U. S. Treasury Department.

Apr. 12, 1946—Summons issued and with copies of said complaint handed to the marshal for service.

Apr. 18, 1946—Summons returned showing service.

* * *

Jan. 20, 1953—First Amended Complaint filed and with order and copies handed to the marshal to serve.

Jan. 19, 1953—Hearing on motion to file first amended complaint. Court granted the Motion to add defendants and extended time to answer to 90 days from today. Smith, J.

* * *

July 1, 1953—Appearance filed.

Oct. 19, 1953—Answer to first amended complain filed.

* * *

Pertinent Docket Entries (Civil Nos. 1707 and 1708)

Civil No. 1707

Jan. 15, 1958—Amendment to first amended complaint filed.

• • •

Sept. 12, 1962—Appearance of Albert G. Murphy entered for the defendant Daniel J. Leary.

Sept. 22, 1962—Memorandum in Lieu of Pre-Trial Order, filed. Blumenfeld, J. Copies mailed Messrs. Murphy, Brodigan and Day, Berry & Howard and U. S. Atty.

Oct. 25, 1962—Motion for Summary Judgment filed by plaintiff.

Oct. 25, 1962—Notice of Motion filed by plaintiff.

• • •

Jan. 28, 1963—Hearing on Plaintiff's Motion for Summary Judgment Continued for 4 weeks. Blumenfeld, J. Complaint and Motion may be amended within 3 weeks. Appearance of Wm. Collins, Wash., D. C., with notation on Motion for Summary Judgment filed.

Jan. 28, 1963—Appearance of William H. Collins entered for defendant Daniel J. Leary on Motion for Summary Judgment, filed.

Apr. 22, 1963—Hearing on Plaintiff's Motion for Summary Judgment. Decision Reserved. Blumenfeld. J. Govt. Exhibits 6, 7, 8 and 9 submitted to Judge Blumenfeld, filed. Certified copies of documents from tax Court and District Director of I.R.S.—all were submitted with Govt. brief.

Pertinent Docket Entries (Civil Nos. 1707 and 1708)

Civil No. 1707

May 17, 1963—Ruling on Motion for Summary Judgment entered. Motion granted. Judgment to be entered consolidating Civil Nos. 626, 1707 and 1708 under Civil 626. Blumenfeld, J. Copies mailed Day, Berry & Howard; Gross, Hyde & Williams; Murphy; and Brodigan. Also on 5/21/63 copies mailed Atty. Collins and Asst. U. S. Atty. O'Connor.

May 22, 1963—Partial Summary Judgment entered consolidating Civil Actions 1707 and 1708 with Civil 626; that the plaintiff recover of the defendant Daniel J. Leary the sum of $996,278.69 and of the defendant Sadie D. Leary $750,511.09 of that sum and that the plaintiff recover its costs of action. Blumenfeld, J. Copies mailed Day, Berry & Howard; Gross, Hyde & Williams; Murphy; Brodigan, O'Connor and Collins.

* * *

July 19, 1963—Notice of Appeal filed. Copies mailed.

Sept. 26, 1963—Stipulation re Contents of Record on Appeal, filed.

Civil No. 1708

Apr. 12, 1946—Bill of complaint demanding judgment against the defendant for the full amount of $119,912.55 together with interest as allowed by law and for costs, filed.

Apr. 12, 1946—Summons issued and with copy of said complaint handed to the marshal for service.

Pertinent Docket Entries (Civil Nos. 1707 and 1708)

Civil No. 1708

Apr. 18, 1946—Summons returned showing service.

* * * *

Sept. 12, 1962—Appearance of Albert G. Murphy entered for the defendant Daniel J. Leary.

Sept. 22, 1962—Memorandum in Lieu of Pre-Trial order, filed. Blumenfeld, J. Copies mailed Atty. Murphy and U. S. Atty.

Oct. 25, 1962—Motion for Summary Judgment, filed by plaintiff.

Oct. 25, 1962—Notice of Motion filed by plaintiff.

* * *

Jan. 28, 1963—Hearing on Plaintiff's Motion for Summary Judgment continued for 4 weeks. Blumenfeld, J. Complaint and Motion may be amended within 3 weeks. Appearance of Wm. Collins, Wash., D. C., with notation on Motion for Summary Judgment, filed.

Jan. 28, 1963—Appearance of William H. Collins entered for defendant Daniel J. Leary on Motion for Summary Judgment, filed.

Apr. 22, 1963—Hearing on Plaintiff's Motion for Summary Judgment. Decision Reserved. Blumenfeld, J. Govt. Exhibits 6, 7, 8 and 9 submitted to Judge Blumenfeld, filed. (Certified copies of documents from tax Court and District Director of I.R.S.—all were submitted with Govt. brief.)

Pertinent Docket Entries (Civil Nos. 1707 and 1708)

Civil No. 1708

May 17, 1963—Ruling on Motion for Summary Judgment entered. Motion granted. Judgment can be entered consolidating Civil Nos. 626, 1707 and 1708 under Civil 626. Blumenfeld, J. Copies mailed Messrs. Day, Berry & Howard; Gross, Hyde & Williams; Murphy and Brodigan. Also on 5/21/63 copies mailed Asst. U. S. Atty. O'Connor and Atty. Collins.

May 22, 1963—Partial Summary Judgment entered that Civil 1707 and 1708 are consolidated with 626; that the plaintiff recover of the defendant Daniel J. Leary the sum of $996-278.69 and of the defendant Sadie D. Leary $750,511.09 of that sum and that the plaintiff recover its costs of action. Blumenfeld, J. Copies mailed Messrs. Day, Berry & Howard; Gross, Hyde & Williams; Murphy; Brodigan; O'Connor and Collins.

July 19, 1963—Notice of Appeal filed. Copies mailed.

Sept. 26, 1963—Stipulation re Contents of Record on Appeal, filed.

Complaint in Civil No. 626

(Tr. pp. 1-10)

IN THE

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF CONNECTICUT

[SAME TITLE]

I.

This is a suit of a civil nature arising under a law of Congress providing for internal revenue and the collection thereof, prosecuted under the authority and direction of the Attorney General of the United States with the sanction and at the request of the Commissioner of Internal Revenue.

II.

This Court has jurisdiction of this case under the provisions of Section 3678, Section 3744 and Section 3800 of the Internal Revenue Code.

III.

The defendant, Daniel J. Leary, is a citizen and resident of the City of Waterbury, State of Connecticut, and subject to the jurisdiction of this Court.

IV.

The defendant, Mrs. Sadie D. Leary, is a citizen and resident of the City of Waterbury, State of Connecticut, and subject to the jurisdiction of this Court.

V.

The defendant, Daniel J. Leary (Son), is a citizen and resident of the City of Waterbury, State of Connecticut, and subject to the jurisdiction of this Court.

VI.

The Travelers Life Insurance Company is and at all material times hereinafter mentioned, was an insurance corporation authorized to do business in the State of Connecticut and within the jurisdiction of this Court and subject to service of process in actions or suits in this Court.

VII.

The Sun Life Assurance Company of Canada, is and at all material times hereinafter mentioned, was an insurance corporation authorized to do business in the State of Connecticut and within the jurisdiction of this Court and subject to service of process in actions or suits in this Court.

VIII.

The Aetna Life Insurance Company is and at all material times hereinafter mentioned, was an insurance corporation authorized to do business in the State of Connecticut and within the jurisdiction of this Court and subject to service of process in actions or suits in this Court.

IX.

The John Hancock Mutual Life Insurance Company is and at all material times hereinafter mentioned was an insurance corporation authorized to do business in the State of Connecticut and within the jurisdiction of this Court and subject to service of process in actions or suits in this Court.

X.

On April 15, 1940, the Commissioner of Internal Revenue made jeopardy assessments against the defendants Daniel J. Leary and Sadie D. Leary, jointly and severally, of tax, penalty and interest for the years 1933, 1934 and 1935, in the respective amounts of $53,108.57, $205,538.74 and $11,614.65.

XI.

The Collector of Internal Revenue on April 17, 1940, served notice and demand upon the defendants Daniel J. Leary and Sadie D. Leary, for payments of the amounts so assessed. Although notice and demand was made upon the defendants Daniel J. Leary and Sadie D. Leary, no payments were made to the Collector.

XII.

The defendant Travelers Life Insurance Company issued a life insurance policy No. 1800154 upon the life of the Defendant Daniel J. Leary, which had a net cash value of $20,265.15 on March 26, 1940, payable according to the terms of the contract in seven annual installments of $3,242.42 each. A notice of levy (Treasury Form 668-A) notifying the defendant Travelers Life Insurance Company of the taxes due the United States, jointly and severally from Daniel J. Leary and Sadie D. Leary, was served on or about April 17, 1940. A final notice and demand (Treasury Form 668-C) was served on the defendant, the Travelers Life Insurance Company on or about August 13, 1940. The defendant, Travelers Life Insurance Company refused, failed and has failed to pay over to the Collector pursuant to such demands any of the property or rights to property belonging to or owned by Daniel J. Leary and Sadie D. Leary in the insurance policy above-mentioned.

XIII.

The Sun Life Assurance Company of Canada issued a life insurance policy No. 1211995 on the life of the defendant Daniel J. Leary. The plaintiff is informed and believes and therefore alleges upon information and belief that under the terms of the policy the defendant Daniel J. Leary has the right to change the beneficiary and the entire policy is subject to his unqualified dominion, control and disposition. The plaintiff further alleges upon information and belief that this insurance policy had a net cash surrender value of approximately $1,372.10 on April 18, 1940. A notice of levy (Treasury Form 668-A) notifying the defendant the Sun Life Assurance Company of Canada of the taxes due the United States jointly and severally from Daniel J. Leary and Sadie D. Leary was served on or about April 18, 1940, on the defendant the Sun Life Assurance Company of Canada. A final notice and demand (Treasury Form 668-C) was served on the defendant the Sun Life Assurance Company of Canada, on or about August 16, 1940. The defendant, the Sun Life Assurance Company of Canada refused, failed and has failed to pay over to the Collector pursuant to such demands any of the property or rights to property belonging to or owned by the defendants Daniel J. Leary and Sadie D. Leary in the insurance policy mentioned above.

XIV.

The Aetna Life Insurance Company issued the following life insurance policies on the life of the defendant Daniel J. Leary:

No. N-211624
No. N-240329
No. P-676922
No. P-697478

The plaintiff is informed, believes and therefore alleges upon information and belief that under the terms of the above-named insurance policies the defendant Daniel J. Leary has the right to change the beneficiary and the policies are subject to his unqualified dominion, control and disposition. Plaintiff further alleges upon information and belief that the above-mentioned insurance policies have cash surrender values available to Daniel J. Leary and Sadie D. Leary, jointly and severally. A notice of levy (Treasury Form 668-A) notifying the defendant the Aetna Life Insurance Company of the taxes due the United States, jointly and severally from Daniel J. Leary and Sadie D. Leary, was served on or about April 18, 1940. A final notice and demand (Treasury Form 668-C) was served on the defendant the Aetna Life Insurance Company on or about August 13, 1940. The defendant the Aetna Life Insurance Company refused, failed and has failed to pay over to the Collector pursuant to such demands any of the property or rights to property belonging to or owned by Daniel J. Leary and Sadie D. Leary in the insurance policies above mentioned.

XV.

The John Hancock Mutual Life Insurance Company issued the following life insurance policies on the life of the defendant Daniel J. Leary:

No. 016057
No. 029689
No. 1993552
No. A-29915
No. A-30515

The plaintiff is informed, believes and therefore alleges that the Diamond Ginger Ale Incorporated of Waterbury, Connecticut, is the beneficiary named in policy No. 19-

93552, and Daniel J. Leary (Son), is the beneficiary named in policies Nos. A-29915 and A-30515. The plaintiff is informed, believes and therefore alleges upon information and belief that under the terms of the above-named insurance policies the defendant Daniel J. Leary has the right to change the beneficiary and the policies are subject to his unqualified dominion, control and disposition. Plaintiff further alleges upon information and belief that the above-named insurance policies have cash surrender values available to Daniel J. Leary and Sadie D. Leary, jointly and severally. A notice of levy (Treasury Form 668-A) notifying the defendant the John Hancock Life Insurance Company of the taxes due the United States, jointly and severally from Daniel J. Leary and Sadie D. Leary, was served on or about April 24, 1940. A final notice and demand (Treasury Form 668-C) was served on the defendant John Hancock Life Insurance Company on or about April 30, 1940. The defendant the John Hancock Life Insurance Company refused, failed and has failed to pay over to the Collector pursuant to such demands any of the property or rights to property belonging to or owned by Daniel J. Leary and Sadie D. Leary in the insurance policies above-mentioned.

XVI.

The plaintiff is advised, believes and therefore avers that the defendants Daniel J. Leary and Sadie D. Leary have property and rights to property in the insurance policies above-named and that said property and rights to property are subject to the claim of the United States for payment of the unpaid income tax liability of Daniel J. Leary and Sadie D. Leary for the years 1933, 1934 and 1935.

XVII.

The plaintiff has a lien under Section 3670 and Section 3671 of the Internal Revenue Code upon the aforementioned life insurance policies, the cash surrender values thereof and on the property or rights to property in said policies to secure the payment of the taxes, penalties and interest due from Daniel J. Leary and Sadie D. Leary, jointly and severally for the years 1933, 1934 and 1935.

XVIII.

Pursuant to Sections 3670, 3671 and 3672 of the Internal Revenue Code, the Collector of Internal Revenue for the District of Connecticut, on or about April 18, 1940, filed notices of tax liens with the Town Clerks of New Haven, Hartford, Waterbury, and Middlebury, Connecticut, and served notice of the liens upon all of the defendants together with notice of levy and demand for payment.

XVIX.

The plaintiff avers that its lien upon the said insurance policies and the rights to property in the policies is superior to the right of the defendant Daniel J. Leary, the defendant Sadie D. Leary, the defendant Daniel J. Leary (Son), the defendants the Travelers Life Insurance Company, Sun Life Assurance Company of Canada, Aetna Life Insurance Company, and the John Hancock Mutual Life Insurance Company, and any and all persons claiming to have an interest in the insurance policies on the life of the defendant Daniel J. Leary.

WHEREFORE, in consideration of the foregoing, the plaintiff prays:

1. The Court enter judgment in favor of the United States against the defendants Daniel J. Leary and Sadie

D. Leary in the amount of $370,261.96, with lawful interest;

2. That in the lien of the United States against Daniel J. Leary and Sadie D. Leary's interest in the named insurance policies be adjudged and decreed superior to whatever rights that may be alleged or claimed by the beneficiaries of the policies, or the insured, or the insurance companies, or any one else claiming an interest in the policies;

3. That the Court adjudge and decree that the property and rights to property of the defendants Daniel J. Leary and Sadie D. Leary in the aforesaid life insurance policies, are subject to the lien of the United States for unpaid income tax, penalty and interest assessed jointly and severally against the defendants Daniel J. Leary and Sadie D. Leary for the years 1933, 1934 and 1935, and that the judgment entered in favor of the United States be ordered paid and satisfied out of the funds available from the cash surrender values of the aforesaid insurance policies;

4. That the defendants Daniel J. Leary and Sadie D. Leary, and the defendant Daniel J. Leary (Son), be ordered to execute whatever documents the Court may find necessary in order that the plaintiff may secure the cash surrender value of the insurance policies or any other amount which represents the propery or rights to property in the insurance policies belonging to the defendant Daniel J. Leary and Sadie D. Leary, jointly and severally, to satisfy the outstanding tax liability against them for the years 1933, 1934 and 1935;

5. That the defendants the Travelers Life Insurance Company, Sun Life Assurance Company of Canada, Aetna Life Insurance Company and John Hancock Life Insur-

ance Company, then be ordered to pay to the United States the value of the property and rights to property of the defendants Daniel J. Leary, and Sadie D. Leary and the defendant Daniel J. Leary (Son) in the aforesaid insurance policies.

6. That the Court give the plaintiff such other general relief both legal and equitable as may be necessary or appropriate for the enforcement of the internal revenue laws and for a decree giving costs and lawful disbursements to the plaintiff.

ROBERT P. BUTLER,
United States Attorney.

Complaint in Civil No. 1707

IN THE

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF CONNECTICUT

(Tr. pp. 19-21)

UNITED STATES OF AMERICA

v.

DANIEL J. LEARY and SADIE D. LEARY

NOW COMES, the United States of America, by Adrian W. Maher, United States Attorney in and for the District of Connecticut, and for claim against the above-named defendants alleges as follows:

I

This action is commenced under the direction of the Attorney General of the United States of America; and has been authorized by the Commissioner of Internal Revenue of the United States Treasury Department.

II

During all times hereinafter mentioned the plaintiff has been and now is a corporation sovereign and body politic.

III

On April 29, 1935, the defendants, residents of Connecticut, filed their joint federal income tax return for the calendar year 1934; and on April 29, 1936, filed their

joint federal income tax return for the calendar year 1935. Said returns were filed with the Collector of Internal Revenue for the District of Connecticut.

IV

On April 15, 1940, said Commissioner, having determined a deficiency in said taxes and a penalty for each of said years 1934 and 1935, made jeopardy assessments of said deficiencies, penalties and accrued interest in the amounts for each of the said years as follows:

Years	*Deficiencies in Taxes*	*Penalties*	*Accrued Interest*	*Totals*
1934	$113,949.10	$56,836.16	$34,754.38	$205,538.74
1935	63,636.37	32,387.37	15,590.91	111,614.65
				$317,153.39

V

Said Commissioner's assessment list of said deficiency in taxes, penalty, and interest for each of said years was received by the Collector of Internal Revenue for the District of Connecticut on April 17, 1940, and, on that day, he gave notice of said income tax liabilities to and demanded payment thereof from the defendants.

VI

On June 7, 1940, said Commissioner sent a notice of said deficiencies in taxes by registered mail to said defendants and therein advised them that they may, within 90 days of the mailing of said notice, file a petition with the United States Board of Tax Appeals for a redetermination of said deficiencies in taxes.

VII

On October 9, 1940, the defendants filed a petition with the United States Board of Tax Appeals for a redetermination of said Commissioner's determination of said deficiencies in taxes.

VIII

The Tax Court of the United States (formerly the Board of Tax Appeals), having on January 24, 1945, redetermined said tax deficiencies, entered its decision and order on May 24, 1945, whereby it held and ordered a deficiency of said taxes of the defendants for the said year 1934 of $100,531.92 and a penalty of $50,265.96; and that there was a deficiency in said taxes of the defendants for the year 1935 of $85,472.74 and a penalty of $43,305.55.

IX

No petition for review of said decision of the Tax Court of the United States has been filed; no part of said decision has been set aside or modified; the same has become final; and it is in full force and effect.

X

On December 14, 1945, an assessment was made by said Commissioner for the unassessed portion of the deficiency in taxes and the penalty as redetermined by said Tax Court for said year 1935. Said assessment consists of taxes of $21,836.37, a penalty of $10,918.18 and accrued interest of $12,769.19. For the over assessed amount of the taxes, penalty and interest as redetermined by said Tax Court for said year 1934, said Commissioner has issued a certificate of overassessment for $13,417.18 in taxes, $4,092.25 of the penalty and $6,569.20 in interest.

Said tax liabilities, as readjusted pursuant to the decision of the Tax Court, by the assessment of the unassessed portion on December 14, 1945, of the year 1935 and the issuance of the certificate of overassessment for the year 1934, consist of the amounts for each of said years as herein tabulated as ollows:

Years	Jeopardy Assessments	Assessments of 12/14/45	Certificate of Overassessment	Adjusted Totals
1934	$181,460.11	$	$24,078.63	$157,381.48
1935	111,614.65	45,523.74		157,138.39
				$314,519.87

XI

On December 26, 1945, said Collector of Internal Revenue for the District of Connecticut received the assessment list of said assessment made on December 14, 1945, and on December 28, 1945 gave notice of said assessment for the year 1935 to and demanded payment thereof from said defendants.

XII

No part of said tax liabilities as finally assessed has been paid and the total amount of said liabilities now due is $314,519.87.

WHEREFORE, the plaintiff demands judgment against the defendants for the full amount of $314,519.87, together with interest as allowed by law and for costs.

April 11, 1946.

ADRIAN W. MAHER,
United States Attorney.
EDWARD J. LONERGAN,
Assistant United States Attorney.

Complaint in Civil No. 1708

(Tr. pp. 30-32)

IN THE

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,

v.

DANIEL J. LEARY.

NOW COMES, the United States of America, by Adrian W. Maher, United States Attorney in and for the District of Connecticut, and for claim against the above-named defendant alleges as follows:

I

This action is commenced under the direction of the Attorney General of the United States of America; and has been authorized by the Commissioner of Internal Revenue of the United States Treasury Department.

II

During all times hereinafter mentioned the plaintiff has been and now is a corporation sovereign and body politic.

III

On March 17, 1934, the defendant, a resident of Connecticut, filed his federal income tax return for the calendar year 1933 with the Collector of Internal Revenue for the District of Connecticut.

IV

On April 15, 1940, said Commissioner, having determined a deficiency in said taxes and a penalty for said year 1933, made a jeopardy assessment of said deficiency in taxes of $28,254.78, a penalty of $14,540.80 and accrued interest of $10,312.99, making a total assessment of $53,108.57.

V

Said Commissioner's assessment list of said deficiency in taxes, penalty, and interest for said year 1933 was received by the Collector of Internal Revenue for the District of Connecticut on April 17, 1940; and, on that day, he gave notice of said income tax liability to and demanded payment therof from the defendant.

VI

On June 7, 1940, said Commissioner sent a notice of said deficiency in taxes by registered mail to the defendant and therein advised him that he may, within 90 days of the mailing of said notice file a petition with the United States Board of Tax Appeals for a redetermination of said deficiency in taxes.

VII

On October 9, 1940, the defendant filed a petition with the United States Board of Tax Appeals for a redetermination of said Commissioner's determination of said deficiency in taxes.

VIII

The Tax Court of the United States (formerly the Board of Tax Appeals), having on January 24, 1945, redetermined said tax deficiency, entered its decision and order on May 24, 1945, whereby it held and ordered a de-

ficiency in said taxes of the defendant for said year 1933 of $58,554.57 and a penalty of $29,690.69.

IX

No petition for review of said decision of the Tax Court of the United States has been filed; no part of said decision has been set aside or modified; the same has become final; and it is in full force and effect.

X

On December 14, 1945, an assessment was made by said Commissioner for the unassessed portion of said deficiency in taxes and said penalty as redetermined by said Tax Court for said year 1933. Said assessment consists of taxes of $30,299.79, a penalty of $15,149.89 and accrued interest of $21,354.30. Said tax liability, as readjusted pursuant to the decision of the Tax Court by the assessment of the unassessed portion on December 14, 1945 for the year 1933 is of the amount of $119,912.55.

XI

On December 26, 1945, said Collector of Internal Revenue for the District of Connecticut received the assessment list of said assessment made on December 14, 1945 and on December 28, 1945 gave notice of said assessment for the year 1933 to and demanded payment thereof from said defendant.

XII

No part of said tax liability, assessed as aforesaid, amounting to $119,912.55 has been paid.

WHEREFORE, the plaintiff demands judgment against the defendant for the full amount of $119,912.55, together with interest as allowed by law and for costs.

April 11, 1946.

ADRIAN W. MAHER,
United States Attorney
By EDWARD J. LONERGAN,
Assistant United States Attorney.

Plaintiff's Motion for Summary Judgment in Civil Nos. 626, 1707, 1708

(Tr. p. 52)

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

[SAME TITLE]

Comes now the United States by and through its attorney Robert C. Zampano, United States Attorney in and for the District of Connecticut, and moves this Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, to enter a summary judgment in favor of the United States of America for the relief demanded in the complaints filed in the above actions, on the ground that there is no genuine issue as to any material fact and that the United States of America is entitled to judgment as a matter of law.

Attached hereto in support of this motion are Government's Exhibits Nos. 1 through 5, inclusive.

ROBERT C. ZAMPANO,
United States Attorney.
By: JAMES J. O'CONNOR,
Assistant United States Attorney.

Partial Summary Judgment in Consolidated Actions

(Tr. pp. 112-113)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[SAME TITLE]

Civil No. 626 (with which has been consolidated Civil No. 1707 and Civil No. 1708).

This case came on to be heard on plaintiff's motion for summary judgment, similar motions having been filed by the plaintiff in Civil Actions numbers 1707 and 1708, and the Court having considered all pleadings, affidavits and exhibits in the three cases and having concluded that the same questions of law and fact are involved between the plaintiff, United States and the defendants, Daniel J. Leary and Sadie D. Leary in all three cases and that in each case there is no genuine issue of fact and no controversial question of fact to be submitted to the trial court concerning these defendants' liability to the plaintiff and the amounts thereof, and having determined that there is no just reason for delay and having directed that judgment be entered consolidating Civil actions numbered 1707 and 1708 with number 626 and for the plaintiff to recover of the defendant Daniel J. Leary $996,278.69 and of the defendant Sadie D. Leary $750,511.09 of said total indebtedness of $996,278.69, now therefore,

IT IS ORDERED, ADJUDGED AND DECREED that Civil Actions 1707 and 1708 are consolidated with this action, Civil number 626; that the plaintiff recover of the defendant Daniel J. Leary the sum of $996,278.69 and of the defendant Sadie D. Leary $750,511.09 of that sum and that the plaintiff recover its costs of action.

Notice of Appeal in Consolidated Actions

Dated at Hartford, Connecticut, this 21st day of May, 1963.

M. JOSEPH BLUMENFELD,
United States District Judge.

Notice of Appeal in Consolidated Actions

(Tr. p. 114)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

[SAME TITLE]

Civil No. 626 (with which has been consolidated Civil No. 1707 and Civil No. 1708).

Notice is hereby given this 17th day of July, 1963, that Daniel J. Yeary and Sadie D. Leary defendants, hereby appeals to the United States Court of Appeals for the Second Circuit from the judgment of this Court entered on the 21st day of May, 1963 in favor of plaintiff against said defendants.

WILLIAM H. COLLINS,
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Attorneys for Defendants.